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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE  
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10 UNITED STATES OF AMERICA,  
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12 Plaintiff,  
13 v.  
14 DAVID D. DELAY,  
15 Defendant.

Case No. CR15-175RSL

ORDER DENYING MOTION  
FOR ISSUANCE OF  
DOCUMENTS SUBPOENA

16 This matter comes before the Court on defendant's "Motion for Issuance of Documents  
17 Subpoena." Dkt. # 376. The government opposes defendant's motion on several grounds. For  
18 the reasons explained below, defendant's motion is DENIED.

19 Defendant David Delay faces federal sex-trafficking and child-pornography charges that  
20 include an alleged victim he apparently met through the social media website Tagged.com. In  
21 the motion before the Court, he seeks a subpoena issued to the website's parent company for  
22 production of all records and documents related to Tagged.com accounts associated with that  
23 victim's email addresses. Defendant previously moved the Court for similar subpoenas  
24 involving Tagged.com records. Among other things, the previous motion sought to subpoena  
25 records related to the accounts of both defendant and the alleged victim. The Court granted  
26 defendant's motion with regard to his own account, but denied the motion with regard to the  
27 victim's accounts because defendant failed to notify the victim that her personal or confidential  
28 information could be produced by a potential subpoena served on a third party. See Fed. R.

1 | Crim. P. 17(c)(3). Defendant moves again for a subpoena to obtain records associated with the  
2 | victim's accounts. Defendant lacks the victim's contact information, and he also seeks an order  
3 | directing the government to notify the victim of this motion in order to comply with the relevant  
4 | notice requirements.

5 | Issuance of subpoenas in a criminal proceeding is governed by Federal Rule of Criminal  
6 | Procedure 17. Rule 17(c)(1) provides for the issuance of a subpoena for pretrial production of  
7 | documents, but "a Rule 17(c) subpoena is not intended to serve as a discovery tool." United  
8 | States v. MacKey, 647 F.2d 898, 901 (9th Cir. 1981) (citing Bowman Dairy Co. v. United  
9 | States, 341 U.S. 214, 220 (1951)). The burden is on the party seeking production to show the  
10 | relevance, admissibility, and specificity of the items sought, see United States v. Reed, 726 F.2d  
11 | 570, 577 (9th Cir. 1984), and conclusory allegations of relevance and admissibility are  
12 | insufficient to meet the moving party's burden, United States v. Eden, 659 F.2d 1376, 1381 (9th  
13 | Cir. 1981). To meet that burden, defendant must demonstrate that (1) the documents sought are  
14 | evidentiary and relevant; (2) the documents are not otherwise procurable reasonably in advance  
15 | of trial through due diligence; (3) defendant is unable to properly prepare for trial without such  
16 | production and inspection prior to trial and the failure to obtain such inspection may tend to  
17 | unreasonably delay the trial; and (4) the application is made in good faith and not as a "fishing  
18 | expedition." United States v. Nixon, 418 U.S. 683, 699–700 (1974).

19 | Defendant has not met his burden of showing that the records or documents in his  
20 | extensive request are relevant and admissible, or that he cannot otherwise procure whatever  
21 | relevant and admissible evidence may fall within his request. Defendant seeks "[a]ll records and  
22 | documents pertaining to the Tagged accounts" associated with three of the alleged victim's  
23 | email addresses, "including but not limited to all chat records and profiles of other . . . membest  
24 | [sic] that the account holder may have chatted with." Dkt. # 376-3. Defendant claims the records  
25 | sought "are statements of likely witnesses and may provide impeachment material." Dkt. # 376  
26 | at 3. He also submits that the records may undermine allegations that the victim "informed the  
27 | Defendant that she was less than 18 years of age." Id.  
28 |

1 Nothing before the Court suggests the entirety of the alleged victim's communications  
2 and other private information on Tagged.com concern the defendant or the facts underlying this  
3 case. Defendant's broad request is overinclusive, and it likely sweeps in a great deal of  
4 irrelevant or inadmissible information. Other than "mere conclusory statements," see Eden, 659  
5 F.2d at 1381, defendant has not adequately shown the relevance and admissibility of the items  
6 sought. Nor has he shown he cannot otherwise procure what relevant documents may fall within  
7 his broad request. The records in his request that are most likely to be relevant in the ways  
8 defendant claims are the victim's communications with the defendant himself, and those records  
9 are either already in defendant's possession or are otherwise reasonably procurable. The Court  
10 therefore finds that defendant has not met his burden of justifying issuance of a subpoena under  
11 Rule 17.<sup>1</sup>

12 For the foregoing reasons, defendant's motion is DENIED.

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14 DATED this 2nd day of October, 2017.

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18 Robert S. Lasnik  
19 United States District Judge  
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25 <sup>1</sup> In its response, the government includes an argument that disclosure of the records defendant seeks  
26 would cause Tagged.com's parent company to violate the Stored Communications Act ("SCA"), 18  
27 U.S.C. § 2702(a)(1). Dkt. # 383 at 6. Defendant contends the government lacks standing to challenge a  
28 subpoena request of this nature. Dkt. # 376 at 5. Because the Court concludes defendant has not made  
the threshold showing for issuing a pretrial subpoena for documents under Rule 17, the Court need not  
reach those questions.